(d) the guarantee shall last until payment of any costs awarded to the defendants against the plaintiff at the conclusion of civil suit No. 10 of 1991;
(e) the costs of this application should be paid by the plaintiff, such costs to be taxed if not agreed.

ENERGY PILING

v.

RTA CONSTRUCTION (B) LTD.

HIGH COURT, BRUNEI
DATO SIR DENYS ROBERTS CJ
[CIVIL SUIT NO. 62 OF 1990]
11 JANUARY 1993

COMPANY LAW: Judgment in default obtained against company - Registrar ordering directors to pay balance of judgment debt - Whether directors personally liable for debt.

The plaintiff obtained judgment in default against the defendant. The directors of the defendant were ordered to be examined as to the ability of the defendant to pay. One of the directors made an offer "without prejudice" to repay the debts of the defendant from his own resources. Upon being informed that the defendant was to be wound up, the plaintiff sought an order that the directors pay the balance of the judgment sum and the Registrar so ordered.

Held:

[1] In the absence of any undertaking to the contrary, the director of a company cannot be held liable for the debts of a company.

[2] There was no unequivocal acceptance of liability by the directors. The directors made an offer, on a without prejudice basis, to pay part of the debt owed to the plaintiff but that was all.

[Appeal allowed with costs].

JUDGMENT

Sir Denys Roberts CJ:

This is an appeal against an order made by a registrar on 27 July 1992.

The plaintiff obtained judgment, in default of appearance by the defendant, on 7 June 1990, for BD56,991.85 and interest and costs.

The plaintiff had issued a writ and statement of claim on 21 March 1990, claiming these amounts against the defendant for construction works carried out by the plaintiff at Muara, Brunei Darussalam, in accordance with a written contract dated 28 January 1988.

On 20 June 1991, a registrar ordered that the directors of the defendant company, namely Hj Umar bin Muhammed and Hajjah Jauyah binte Abdullah should be examined as to the ability of the defendant company to pay the debt which it owed to the plaintiff.

Haji Umar made an offer "without prejudice" to repay the debts of the company from his own resources at the rate of BD500 a month, starting from October 1991. This was announced to a registrar on 11 November 1991 and the matter was adjourned to Monday 27 January 1992.

On the latter date, Haji Umar, who had so far paid BD2000 in all, offered to increase his instalments to BD1000 a month as from February 1992. His proposal was accepted by the plaintiff. The matter was then adjourned to 27 April 1992.

After a further adjournment to 25 May 1992, a registrar reduced the amount of the payments, on the proposal of Haji Umar, to BD500 a month, the matter to be reviewed on 27 July 1992.

On the latter date, the Registrar was informed that the company was to be wound up.

The plaintiff asked for an order for the payment of BD1000 per month by Haji Umar and Hajjah Jauyah.

The Registrar made an order that both directors should pay the balance of the judgment debt of BD51,491.85 together with interest at 6% per annum from 7 June 1990 and costs of BD200 by a payment of BD500 forthwith and thereafter by monthly instalments of BD1000 to commence on 7 August 1992 and thereafter on or before the 7th of each succeeding month until full payment.

This appeal is against this order of the Registrar of 27th July 1992, leave having been given by a registrar, on 17 December 1992, to lodge the necessary notice of appeal out of time.

The defendant's appealed on two main grounds -

(a) that the order of 27 July should not have been made at all, since it was not a consent order and there was no examination as to the ability of the two directors to pay; and

(b) it was wrong to make an order against the directors of a company, when the judgment debt was not obtained against them, but against the company.

One of the important reasons for the establishment of the limited company is that its directors are not personally liable for the debts of the company, unless they specifically assume them and make a promise to pay them.

There is nothing in the record before me which suggests any such unequivocal acceptance of liability by the directors. The latter made an offer, on a without prejudice basis, to pay part of the debt owed to the plaintiff by the company, but that is all.

The correct course would have been for the directors to be examined as to the ability of the company to pay the debts, not as to the ability of the directors.

There was, in fact, no examination of the directors and the order of 27 July seems to have been made in their absence and without their consent.

It is understandable that the Registrar lost sight of the important distinction between the debts of the company and those of the directors of it on a personal basis. Apart from making it clear that the offer of the directors was "without prejudice", this difference does not seem to have been drawn by the solicitors for the defendant, or indeed the solicitors for the plaintiff, at any stage in the proceedings, even on 27 July 1992.

While, therefore, I have to allow the appeal and quash the order made on 27 July 1992, I can well understand how it came to be made.

The main reason for allowing the appeal is that, in the absence of any undertaking to the contrary, the director of a company cannot be held liable for the debts of a company. The same of course does not apply to a partnership, all the partners of which are liable, to the extent of any assets they may have, for the debts of the partnership.

I will therefore allow the appeal and order that a date should be fixed for the examination of the directors of the defendant company as to the means and ability to pay of that company.

The appellant (RTA Construction (B) Ltd) shall have the costs of the hearing, these costs to be taxed if not agreed.

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